

ADVISORY OPINION 91-12 [1991-4]

The Ethics Commission has received your request for advice dated March 27, 1991. Your request relates the following facts: In December, 1990, you left County employment as the head of a department in the Executive Branch of County government (Department). Since that time, you have begun a “small consulting business” which utilizes your personal expertise in a technical field that forms the basis for the operation of the Department. While you were head of the Department, many of the firms operating in the area of your expertise had contracts administered by the Department.

You have asked the Ethics Commission if the Ethics Law prevents you from contracting with the firms that had a contract with the Department while you were its head.

Section 19A-13(b) provides:

“For one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business that contracts with a County agency if the public employee:

* * *

(2) had official responsibility concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility)”.¹

Section 19A-13(b) prohibits a former employee from entering into an employment arrangement with a business that is currently contracting with the County. Your request for advice does not seriously address this issue. For purposes of this response, the Commission has assumed that the firms with which you are interested in providing consulting services are currently contracting with the County.

Section 19A-13(b) applies if you, as a public employee, had “official responsibility” over a contract that involved the business with which you would like to enter into an employment arrangement. Under the Montgomery County Procurement Regulations, Section E.7, each department is responsible for administering contracts originated by that department. Contract administration includes monitoring contract performance and making recommendations for termination of a contract, if necessary. As the head of the Department, the Ethics Commission believes that you have had official responsibility, within the meaning of Section 19A-13(b), for each contract administered by the Department.

Section 19A-13(b) prohibits a former public employee from entering into an “employment understanding or arrangement” with certain businesses. Section 19A-4(g) defines employment as “. . . engaging in an activity for compensation.” Section 19A-4(d) defines compensation as “. . . any money or a thing of value, regardless of form, . . . that

¹ Unless otherwise indicated, section references are to the Montgomery County Code (1984).

an employer pays or agrees to pay for services rendered.” Based on these definitions, the Ethics Commission concludes that entering into a contract with a business to provide consulting services is an employment understanding within the meaning of Section 19A-13(b).

Accordingly, the Ethics Commission concludes that for a period of one year after the effective date of your termination of County employment, you may not enter into a consulting contract with a business that contracted with the Department while you were its head.

Under Section 19A-8, the Ethics Commission is authorized to grant a waiver from the prohibitions of Section 19A-13 if the Commission finds:

- “(1) the waiver is needed to ensure that competent services to the County are timely and available;
- (2) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (3) the proposed employment is not likely to create an actual conflict of interest.”

If you would like the Ethics Commission to consider a waiver that would allow you to contract with specific firms, you should write the Commission requesting a waiver and provide the following information:

1. The identity of the firm with which you wish to contract.
2. The nature and value of the contract the firm held with the department when you were its head.
3. The nature of your involvement in the administration of the contract, or its oversight, when you were employed by the County.
4. Whether you propose to work for the business on a matter involving a present County contract or to contact directly an employee of the Department.
5. A description of the nature of the consulting services you propose to provide the business.
6. The amount of consideration you expect to receive from the contract with the business.

The Commission trusts that this advice has been responsive to your inquiry. If you have further questions, please do not hesitate to contact the Ethics Commission.

Date of Issue: May 15, 1991